



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200
MAILING ADDRESS : P.O. Box 2824, San Francisco, CA 94126-2824 | San Francisco, CA 94111-5998

Kenneth E. Keller
tel: 415.983.1084
kenneth.keller@pillsburylaw.com

December 18, 2020

VIA ECF

The Honorable Robert M. Levy
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: AirWair International Ltd. v. Primark US Corp. and Primark Ltd.
Case No.: 1:19-cv-06189-LDH-RML

Dear Magistrate Judge Levy:

As the Court is aware, we represent Plaintiff AirWair International, Ltd. in this matter. We write with respect to the confidentiality order. Currently pending is the entry of one of the two versions of the confidentiality order submitted by the parties.

Having the confidentiality order entered now is critical for the parties to exchange documents that are needed to evaluate this case for a meaningful mediation, which is currently scheduled for January 28, 2021. As the Court will recall, the confidentiality order will contain an outside attorneys' eyes only provision but AirWair has the right and opportunity to approach the Court to lift this designation as to specific documents (or entirely, if necessary). Certainly, AirWair cannot engage in meaningful mediation if it cannot share Primark's documents with its client.

In addition, as we noted to the Court during the telephonic hearing on November 24, 2020, AirWair may seek the Court's order to use some of the documents produced by Primark in parallel proceedings currently being litigated in the Netherlands. It was implied by Primark's counsel at the hearing that since the European proceeding was on appeal, evidence could not be submitted. That is not correct and is a mistake of the procedural posture of the proceedings in the Netherlands. AirWair expects to receive a declaration from Anne Marie Verschuur, AirWair's counsel in the Netherlands proceedings, early next week. Ms. Verschuur will explain how new evidence may be submitted to the Dutch appellate court, as well as why such evidence would be useful in those proceedings. As Ms. Verschuur will

December 18, 2020

Page 2

explain, the hearing on the appeal in the Dutch proceedings is currently set for February 4, 2021. AirWair will supplement this filing with Ms. Verschuur's declaration once it is received from her.

Furthermore, AirWair must submit additional evidence for the appeal hearing ten days prior to the hearing. Therefore, AirWair needs to receive Primark's documents soon so that it has sufficient time to seek a court order allowing AirWair to use these documents in the Dutch proceedings. If there is a delay in the entry of the confidentiality order and the subsequent production of documents by Primark, AirWair will be denied this opportunity.

Plaintiff therefore respectfully requests the Court enter the confidentiality order as soon as possible to afford the parties sufficient time to analyze these documents in advance of the mediation and Dutch litigation deadlines.

Respectfully submitted,

/s/ Kenneth E. Keller
Kenneth E. Keller

Attorneys for Plaintiff AIRWAIR INT'L LTD.

cc: All Counsel of Record (via ECF)